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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/622,129

07/16/2003

Samuel Lichtenstein

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EXAMINER

HOPKINS, CHRISTINE D

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

11/14/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |   |   |  |
|------------------------------|---|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/622,129    | <b>Applicant(s)</b><br>LICHTENSTEIN, SAMUEL |  |
|                              | <b>Examiner</b><br>Christine D. Hopkins | <b>Art Unit</b><br>3735                     |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10, 12-42, 44-64, 69-80 and 82-96 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-42, 44-64, 69-80 and 82-96 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. This Office Action is responsive to the Amendment filed 30 July 2007. Claims 1-10, 12-42, 44-64, 69-80 and 82-96 are now pending. The Examiner acknowledges the amendments to claims 1, 12, 14, 33, and 69, as well as the cancellation of claims 11, 43, 65-68, 81 and 97-102.

#### ***Claim Objections***

2. Claim 33 is objected to because of the following informalities: at line 12, a period should apparently follow "step" as opposed to a semi-colon. Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-10, 12-42, 44-64, 69-80, and 82-96 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 at line 9 and claim 69 at line 11 recite the limitation "the non-blood flow side." Claim 33 at line 12 recites the limitation "the isolated side." There is insufficient antecedent basis for these limitations in the claims.

***Allowable Subject Matter***

5. Claims 1-10, 12-42, 44-64, 69-80 and 82-96 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action. The following is a statement of reasons for the indication of allowable subject matter: regarding claims 1-10, and 12-32, the prior art of record does not teach or fairly suggest a method of altering blood flow through the left ventricle comprising the steps of providing an element movable between collapsed and expanded conditions, collapsing the element in a delivery device, advancing the element into the left ventricle in a collapsed state, expanding the element in the left ventricle and evacuating blood from a non-blood flow side following expansion of the element in the left ventricle and securing such an element, forming a hemostatic seal, to the wall of the left ventricle to form a circumferential attachment to the wall of the ventricle wherein the element separates the left ventricle into a blood flow and non-blood flow side.

Regarding claims 33-42 and 44-64, the prior art of record does not teach or fairly suggest a method of altering blood flow through the left ventricle comprising the steps of providing an element movable between collapsed and expanded conditions, collapsing the element in a delivery device, advancing the element into the left ventricle in a collapsed state, expanding the element in the left ventricle, securing the element to an inner wall of the left ventricle at a position below the papillary muscles so that the element separates the ventricle into a blood flow and an isolated side and evacuating blood from the isolated side after the expanding step.

Regarding claims 69-80 and 82-96, the prior art of record does not teach or fairly suggest providing an element movable between collapsed and expanded conditions, collapsing the element in a delivery device, advancing the element into the left ventricle in a collapsed state, expanding the element in the left ventricle, securing the element to the wall of the ventricle to separate it into a blood flow side and a non-blood flow side and reducing the volume of the non-blood flow side after the expanding step until at least part of the left ventricle wall moves into contact with the element.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christine D. Hopkins whose telephone number is (571) 272-9058. The examiner can normally be reached on Monday-Friday, 7 a.m.-3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. D. H./  
Christine D Hopkins  
Examiner  
Art Unit 3735

/Charles A. Marmor, II/  
Supervisory Patent Examiner  
Art Unit 3735

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